

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Suit 70 of 1997

MOHAMED SAID SHIMACYPLAINTIFF

VERSUS

AHMED MOHAMED ABDULKADIR1ST DEFENDANT

MUNICIPAL COUNCIL OF MOMBASA2ND DEFENDANT

ORDER ON DIRECTIONS

Mr. Lijoodi, learned advocate for Mr. Ahmed Mohamed Abdulkadir, the 1st Defendant herein, urged this court to determine who between the firm of Y.A. Ali & Co. Advocates and that of Khatib & Co. Advocates is validly on record as appearing for the plaintiff. It is the submission of Mr. Lijoodi that the firm of Y.A. Ali & Co. Advocates had been granted leave to cease acting for the plaintiff after which the firm of Khatib & Co. Advocates came on record by filing a notice of appointment as the new advocates for the plaintiff. It is said there is no clear evidence as to how the firm of Y.A. Ali & Co. Advocates came back on record as appearing for the plaintiff in place of Khatib & Co. Advocates. Miss Ngigi, learned advocate for the Municipal council of Mombasa, the 2nd defendant herein, adopted the arguments of Mr. Lijoodi. She urged this court to give directions on the issue.

Mr. Hamza, learned advocate on behalf of the firm of Y. A. Ali & Co. Advocates notified this court that their firm came on record by filing a notice of change of Advocates though there was none in the court file nor in the client's file. He prayed for time to sort out the problem. This court then directed the advocates to discuss the way forward over the issue raised and inform this court the outcome of the matter on 18th June 2008. On that date, Mr. Hamza applied to this court to grant the plaintiff leave to withdraw all documents filed before the filing of the notice of change of advocates. Mr. Lijoodi indicated that, that was the best way to approach the issue hence the necessity to give directions.

The record shows that on 26th November 2001, the firm of Khatib filed a notice of appointment to appear for the plaintiff. The record also indicates that the firm of Y.A. Ali had been granted leave to cease acting for the plaintiff on 26th July 2001. From the above sequence of events it is obvious that the firm of Khatib & Co. Advocates validly came on record by filing a notice of appointment dated 23rd November 2001 and noted by the Deputy Registrar of this court on 26th November 2001. By a notice of appointment dated 6th September 2005, the firm of Y.A. Ali Advocates came on record as acting for the plaintiff. That notice never mentioned the firm of Khatib & Co. Advocates which firm was validly on record for the plaintiff. The firm of Y.A. Ali Advocates could validly come back on record in place of Khatib & Co. Advocates by filing a notice of change of Advocates pursuant to Order III rule 6 of the Civil Procedure Rules. That firm breached the aforesaid rule hence it cannot be said that it has been validly been on record. Consequently documents filed as from 6th September 2005 up to 5th June 2008 should be which I order be struck out and expunged from record. The aforesaid firm has now filed a notice of change of Advocates dated 5th June 2008 to come on record in place of Khatib & Co. Advocates for the plaintiff. I hereby state that the firm of Y.A. Ali Advocates validly came on record to appear for the plaintiff as of 5th June 2008.

Dated and delivered at Mombasa this 1st day of July 2008.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Hamza for the plaintiff.

Lijoodi for 1st Defendant

Mwakireti for 2nd defendant.